



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,817	02/20/2002	Rodney Malcolm Druitt	50179-094	1467

20277 7590 12/04/2003

MCDERMOTT WILL & EMERY  
600 13TH STREET, N.W.  
WASHINGTON, DC 20005-3096

EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 12/04/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/936,817

Applicant(s)

DRUITT ET AL.

Examiner

LIEN TM NGO

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16-23, 25, 26 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16-23, 25, 26 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3727

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, "the peak" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 10-13 16-21, 23, 25 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Druitt (WO 9903746).

In regard to claims 1 and 5, Druitt discloses, in fig. 2a of the attachment, a closure comprising an annular sealing rib 16 projecting downwardly from an underside of the closure top portion; the sealing comprising a first portion 15 and a second, frusto-conical, portion 17 having an upper side, an underside and an extending circular edge; and an annular protrusion 18 formed

Art Unit: 3727

on underside of the second portion at a location spaced outwardly from the circular edge and extending downwardly away from the top portion of the closure; a spacing formed on the underside of the second portion between the circular edge and the annular protrusion; the protrusion engages the outer surface of the portion of the container at a location more distal the free end thereof than the part of the second portion (see fig.3). The annular protrusion 18 is positioned about the midway between the first portion and circular edge of the second portion.

In regard to claims 10-13, the closure comprises a screw thread, and the limitations of the first portion of the sealing rib as claimed (see figs. 1 and 2).

In regard to claims 16-20, the closure is made from polyethylene (page 4, line 18) in one piece, and comprises a tamper evident band as claimed (see fig. 5).

In regard to claims 21 and 23, the closure comprises an annular ridge 21 positioned radially inside of the sealing rib, and a weaken zone 20.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3727

6. Claims 2-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt in view of Tansey (5,782,369).

Druitt does not disclose the protrusion comprising annular ridge having substantially triangular in cross-section which is extending outwardly to a peak.

Tansey teaches, in fig. 5, a protrusion 17 comprising annular ridge having substantially triangular in cross-section which is extending outwardly to a peak.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Druitt closure having the protrusion of sealing rib with annular ridge having substantially triangular in cross-section which is extending outwardly to a peak, in the view of the teaching of Tansey, in order to have the sealing rib to be sealed over a greater area on the container.

7. Claims 6 and 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt.

In regard to claim 6, Druitt does not disclose the annular protrusion disposed closer to the first portion than the free edge of the second portion.

It would have been an obvious matter of design choice to dispose of the annular protrusion in Druitt closer to the first portion, as claimed, in order to provide an extending seal of the closure over on the container.

In regard to claim 26, a container, which is used in an aseptic or hot fill process, is well known in the art, as disclosed by applicant in the specification of the present application, pages 1 and 2,

Art Unit: 3727

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Druitt in view of Blake et al. (5,676,269).

Druitt does not disclose the upper side of the second portion of the sealing rib having an annular ridge.

Blake et al. teach, in fig. 11, a closure having the upper side of the second portion 34 of a sealing rib 32 having an annular ridge as claimed.

Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Druitt closure having the upper side of the second portion of the sealing rib having an annular rib, as taught by Blake et al., in order to provide an extending seal and an engagement means adapted to interlock and hold the sealing rib touching the underside to the closure top portion stationary:

### ***Response to Arguments***

9. Applicant's arguments filed 10-17-03 have been fully considered but they are not persuasive.

Applicant argues that the applied prior art does not disclose a sealing rib having an addition annular portion formed on the underside of the second portion of the sealing rib and which is adapted to engage with an outer surface of the end portion of the container at a location that is distal the free end of the container. However, that is not found convincing because Druitt (WO 99/03746) discloses, in fig. 3, a sealing rib having an addition annular portion 18 formed on

Art Unit: 3727

the underside of the second portion 17 of the sealing rib and which is adapted to engage with an outer surface of the end portion of the container at a location that is more distal the free end of the container than the part of the second portion 17 so resulting in addition sealing contact between the closure and the outer surface of the end portion of the container.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3727

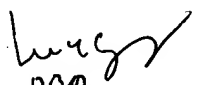
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.

Lien Ngo

December 2, 2003

  
LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700